Supreme Court, U.S.
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No. 02 919

In The

Supreme Court of the United States

MARY ALICE DESSASAU, a.k.a.
MARY ALICE GREEN,

Petitioner,

versus

DOUGLAS M. COOK, Director, Agency for Health Care, THOMAS W. CAUFMAN, Esq., Agency for Health Care, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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10 pp

QUESTIONS PRESENTED

1. Whether the Lower Courts committed reversible error, abused their discretion, violated applicable Federal statutes and regulations when they denied Plaintiff meaningful access to the Courts for redress of fundamental Constitutional Rights violations.

2. Whether the Lower Courts committed reversible error, violated applicable Federal statutes and regulations by failing to accept the merits of the federal claims.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Mary Alice Dessasau v. Douglas M. Cook, et al.,
RE: 02-11308-GG DC DKT No.: 99-01170 CT-T-24

1. Joanne Billingsley, Defendant
2. Louis D. Boccardi, Defendant
3. David Boylan, Defendant
4. J. Stewart Bryan, III, Defendant
5. Honorable Susan C. Bucklew, U.S. District Court Judge
6. Honorable Governor Bush, Defendant
7. Robert A. Butterworth, Defendant
8. Sandra Carey, Defendant
9. Carmen Cartaya, Esq., Counsel for Defendant
10. Thomas W. Caufman, Esq., Defendant
11. Andrea L. Chilton, Defendant
12. Claudia S. Cockrell, Defendant
13. Harry Lee Coe, Defendant
14. Douglas M. Cook, Defendant
15. Bruce Covell Jr., Defendant
16. Colleen David, Defendant
17. Mary Alice Dessasau, Plaintiff
18. Barbara Doyle, Defendant
19. Denis L. Durkin, Esq., Counsel for Defendant

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT – Continued

20. Scott Farr, Defendant
21. Edward A. Feaver, Defendant
22. Buddy Gissendonner, Esq., Defendant
23. Dick Greco, Defendant
24. Jerry M. Gerwirtz, Esq., Counsel for Defendant
25. Donna Hardy, Defendant
26. Jim Hart, Defendant
27. Vern Herzog, Defendant
28. Richard Hixson, Defendant
29. Bennie Holder, Defendant
30. Orval Jackson, Defendant
31. Jim Major, Defendant
32. Ann Mehaffey, Defendant
33. Rupert Murdoch, Defendant
34. Patrick J. Niemann, Defendant
35. Susan Nixdorf, Defendant
36. Lindsay Peterson, Defendant
37. Mark Pizzo, U.S. District Court Magistrate
38. Linda Radigan, Defendant
39. Ann Sarantos, Defendant
40. Ella Mae Smith, Defendant

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT – Continued

41. Sharyn Smith, Defendant
42. Philip J. Spengler II, Esq., Counsel for Defendant
43. Charles Taylor, Defendant
44. Denise White, Defendant
45. Graham Woodlief, Defendant

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OPINIONS BELOW

The opinions of the Lower Circuit are reported at:

Date	Appendix No.	Proceeding
September 11, 2002	1	Per Curiam – Affirmed – Denial of Rule 60(b)
March 15, 2001	2	Per Curiam – Affirmed
October 25, 1999	3	Order Defendant's Motion to Dismiss Granted. Preliminary pretrial conference canceled.
May 27, 1999	4	Order – Plaintiff's Motion for Appointment of Counsel – Denied
October 14, 1999	5	Order Defendant's Motion for Leave of Court to file Motion to Dismiss Out of Time – Granted
November 4, 1999	6	Order Plaintiff's Motion to Reconsider Order Granting Stay of Discovery – Denied
May 9, 2000	7	Order Defendant S. Nixdorf's Motion to Dismiss Granted. Clerk is directed to Close this case.
June 7, 2001	8	Order Appellant's Petition for Rehearing – File Out of Time – Denied
November 5, 2002	9	Per Curiam: Rehearing En Banc – Denied
November 5, 2002	10	Per Curiam: Rehearing – Denied

September 11, 2002	11	Multiple bogus charges filed against Plaintiff by "state actors"
	12	Defendant's Letter to Tell the Truth

STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS

Federal claims violations relevant to this case are:

18 U.S.C. 1001 (1994 and Supp. V 1999);

18 U.S.C. 1621-1623;

42 U.S.C. 1983;

42 U.S.C. 1985.

U.S. Amendments violations relevant to this case are:

Art. II, 2, cl. 2;

1st; 4th; 5th and 14th.

STATEMENT OF THE ISSUES

This case presents the threshold important question of (1). A citizen's fundamental right of access to the courts to present grievance for violation of constitutional rights. (2).

The merits of a case are relevant to the rendering of justice. (Art. II, 2, cl. 2)

STATEMENT OF THE CASE

Introduction

This is a case in which a person who obeyed the law was subjected to three false felony charges and eleven separate false civil charges by affirmative deliberate acts of six state agencies. Petitioner was subjected to a jury trial, two Administrative Hearings, and investigation by the Nursing Board of Professional Regulations. The media portrayed Petitioner as a villain for over two years then went mute. "State actors" constructed a well organized conspiracy to deprive Petitioner of her Constitutional Rights.

> Safeguarding liberty of the citizen against deprivation through action of State, embodies the fundamental concepts of justice which lies at the base of our civil and political institution. *Herbert v. Louisiana*, 272 U.S. 312, 316, 317 (1926)

> For the government to punish a person because he had done what the law plainly allows him to do is a due process violation of the most basic sort. *U.S. v. Guthrie*, 789 F.2d 356 (5th Cir. 1986)

Petitioner's factual claim of innocence was supported by competent substantial evidence. The Closing Order of the Board of Nursing was – No Probable Cause (January 30, 1996). Petitioner was found "Not Guilty" (August 8, 1997). One Administrative Judge recommendation was "beyond her immediate control . . . " but still recommended punishment (April 29, 1997). The other Administrative

Judge Recommendation was "Unfounded" (December 5, 1997).

The Board of Nursing Home Administrators revoked "a license" without due process (February 19, 1998). With duplicity they revoked the wrong license number. They had been given fair notice of the correct license number. The Board of Children & Family Adult Abuse Registry has never given a Final Order per Public Policy.

Petitioner presented a "well founded" Amended Complaint in anticipation of a lawsuit. The Amended Complaint was based in fact of law. The District Court dismissed Plaintiff's claim upon the Defendants' Motion to Dismiss before any trial was initiated. The Court of Appeals Affirmed. Petitioner was deprived of her fundamental right of access to the court.

Although important meritorious claims were presented, Petitioner has been unable to obtain redress from the lower courts. The arbitrary, discriminatory decisions for the Court of Appeals conflicts with Supreme Court decisions, precedents of other authoritative jurisdictions, and the Eleventh Circuit precedents. Thus the Court of Appeals violated Petitioner's Constitutional Rights as evidenced by the intent of the Court to obstruct litigation by denying Petitioner access to the court without legal justification. The Court of Appeals abused its broad power of discretion.

Factual Background

Petitioner Dessasau, aged black female, was the Administrator of Record for the Ambrosia Home, Inc. (Tampa) from March 4, 1994 to August 10, 1995. Petitioner

reported a suspected case of adult abuse to the proper authorities in good faith – May 31, 1995. (F.S. 415.1034) Defendant Hardy conducted an investigation on June 1, 1995. Statute of Limitations for completion and determination was 30 days. A fraudulent report was completed 7/18/96 well beyond the statute of limitations.

Albert Shepard, white male, was administratively in charge of the facility August 5, 1995 to August 14, 1995. Defendant Covel, white male, was the Administrator of Record for the facility August 10, 1995. Defendant Ella Mae Smith, white female owner, had terminated petitioner on August 10, 1995 while Petitioner was attending an Administrators' conference, Marco Island.

On August 11, 1995, the Agency for Health Care, through Defendant Caufman, white male, and Defendant Sarantos, white female, obtained a Verified Petition of Receivership of the facility based on manufactured false allegations of "killings, rapes, abuse" and referenced petitioner as Administrator of Record. The media was present at the court hearing. Media coverage was extreme. Media requested Police's public comment on the "killings, rapes, abuse". With deliberate indifference, the Police never publicly commented. Per police clerk, "Police never filed a police report on this case". To say that Petitioner suffered as a consequence of the unjustified state action is an understatement.

Course Of Proceedings And Disposition

Petitioner filed her Amended Complaint June 7, 1999. Plaintiff's Motion for appointment of Counsel was denied May 27, 1999. On October 14, 1999 the Court denied

Plaintiff's Affidavit and request to enter Default and granted fourteen (14) Defendants' Motion for leave of Court to file their Motions to Dismiss out of Time. There was no "excusable neglect" reason as defined within the meaning of Local Rule 4(b).

On October 25, 1999, the court granted the defendants' Motion to dismiss. The preliminary pretrial conference scheduled for October 26, 1999 at 9:00 a.m. was canceled. On November 4, 1999, Court denied Plaintiff's Motion granting stay of Discovery. On May 8, 2000 Defendant S. Nixdorf's Motion to Dismiss Amended Complaint was granted. The Clerk was directed to close this case.

March 15, 2001 – Middle District of Florida affirmed Court's decision. June 7, 2001, Appellant's petition for rehearing-recall of mandate motion to file out of time was denied. September 11, 2002 Court's decision – was affirmed (Rule 60(b)). November 5, 2002 Court of Appeal denied Rehearing en banc. November 5, 2002 Court of Appeal denied petitions for rehearing.

SUMMARY OF ARGUMENT

There is need for the exercise of the Supreme Court's supervisory authority. The decision of the Lower Courts contravenes the Supreme Court and other Appellate courts precedents establishing the predicate necessary to show that this Plaintiff should be granted meaningful access to the court. The decision also contravenes the Eleventh Circuit's precedents and Hunter Federal Trial Handbook 2d 4.15. There is a need for review by this Court with respect to the proper application of principles, rules,

precedents, and the merits of this case. Petitioner was prejudiced by the dismissal of her meritorious claim.

The Eleventh Circuit's position has a harmful impact and chilling effect on all law-abiding citizens by "Refusing to make a determination in light of the totality of the case circumstances." *Withrow v. Williams*, 507 U.S. at 693-694 (1993). The Eleventh Circuit definitely did not "view complaint in light most favorable to plaintiff". *Scheuer v. Rhodes*, 416 U.S. 232 (1974).

ARGUMENT AND CITATIONS OF AUTHORITY

I. Access to the Court is a fundamental Constitution Right.

A. The First Amendment protects "the right to petition the Government for redress of grievance".

Plaintiff has a constitutional right of access to court grounded in the First Amendment's Petition Cause. *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972); the Fifth Amendment Due Process Clause *Murray v. Giarratano,* 492 U.S. 1, 11 n.6 (1989) (plurality opinion); *Walter v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 335 (1985); The Equal Protection Clause, *Pennsylvania v. Finley,* 418 U.S. 551, 557 (1987); and *Eastern R.R. Presidents Conf. v. Noerr Motor Freight Inc.*, 365 U.S. 127, 137 (1961).

First Amendment clause forbids direct governmental obstruction of or retaliation for, the presentation of grievance. *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978). Petitioner was threatened with arrest by Defendant Caufman

Esq., Agency for Health Care, for presentation of grievance.

Petitioner alleges that the central reason access was denied was a political motivation to conceal the criminal acts of "state actors" from civil and criminal liability.

With a reckless or with callous indifference to Petitioner's Constitutional Rights, The Lower Courts intentionally denied the process to which Petitioner is constitutionally due. This callous indifference to Petitioner's Constitutional Rights was an abuse of discretion. There was no legal justification for the denial of access. The denial of access violated the Fourteenth Amendment (denial of procedural due process).

> Per *Bank v. Pitt*, 927 F.2d 1108, 1111-12 (11th Cir. 1991). The case should not be dismissed "unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

The Lower Court committed reversible error by denying Petitioner's meaningful access to the courts.

B. Due Process right of access to the courts empowers an individual "to bring to Court a grievance that the individual wishes to present".

The District Court canceled discovery and dismissed Petitioner's case "based on Defendant's Motion to dismiss".

> In the Order of October 25, 1999, the Judge stated, "having considered the motions and responses, and being otherwise fully advised finds

> that, for the reasons set forth in the Defendants' motions and memoranda, Defendants' motion to dismiss should be granted".
>
> Until the conference is held, it is impossible for a trial judge to make a fair assessment and to fully understand the issues. Hunter, Federal Trial Handbook 2d 4.15.

It appears that the representatives of the Defendants unduly influenced the District Court. Reality is that if one has a mix of powerful well connected media and resourceful State attorneys, and a judge listening only to Defendant representatives arbitrarily interpreting precedents and federal rules, there is oppression of the poor and a violent perverting of judgment and justice. The merits of this case is the proof. It is apparent that their "game plan" was to never permit this case be heard in court by whatever means necessary.

This situation has a chilling effect on the judicial system. A reasonably prudent man knows that if Judges listen only to Defendants, few if any cases would go to trial. This is especially true for deprivation of Constitutional Rights cases by action of government and media employees.

To permit representatives of one party to privately communicate his wishes to the Judge is a violation of law and prejudiced Petitioner.

> "It is difficult to imagine a more serious incursion on fairness than to permit the representative of one party to privately communicate his recommendations to the decision makers. . . . [D]ue process forbids it." *Camero v. United States*, 375 F.2d 777, 781 (Ct.Cl. 1967) (en banc)

Petitioner was denied the opportunity to present competent substantial evidence concerning violations of fundamental Constitutional rights. Petitioner had demanded a jury trial, not a bench trial.

> Like *Wolff v. McDonnell*, 418 U.S. 539 (1974) stressed that the right of access to the courts founded in the Due Process Clause simply assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental Constitutional rights.

The Petitioner was unjustifiably excluded from this decision making process.

> Due process requires litigant claim be heard by fair and impartial fact finder applies to administrative as well as judicial proceedings. *Porter v. Singletary*, 49 F3d 1483 (11th Cir. 1995)

> Unilateral action by the court should be taken only under the most extraordinary circumstances, since when a court imposes its own view of the issues on the case during the pretrial stages, it runs the risk of prejudicing one or both parties. *United States v. International Business Machines, Corp.,* (SDNY) 68 FRD 358, 20 FR Serv. 2d 829.

Petitioner was accused of involvement with "killings, rapes, abuse" by the Agency For Health Care.

> An official accusation of a serious crime has a direct impact on a range of identified liberty interests that impact, moreover, is of sufficient magnitude to qualify as a deprivation of liberty meriting Constitutional protection. *In re Winship*, 397 U.S. 358, 361-364 (1970)

By dismissing Petitioner's complaint there would be no official accusation of the serious crime of publicly accusing Petitioner of connections with "killings, rapes, abuse" in a nursing home.

Petitioner requests due process for this totally unjustified departure from well settled federal precedents, rules (F.R.C.P. 16, 41(b)) and procedures. Petitioner's case represents both equal protection and due process concerns.

The Lower Courts committed reversible error by denying Petitioner's due process right of access to the courts.

C. The merits[1]

> The jurisdiction of the United Supreme Court does not depend on whether the state court addressed the federal question. It is enough that the federal claim was made and not accepted. *Lynk v. La Porte Superior Court* No. 2, 789 F.2d 554 (7th Cir. 1986). Furthermore, when the Court of Appeals denies a Petition for Review, it is to be assumed that the court has been given fair opportunity to review the merits of the petitioner's claim for purposes of exhaustion of state court remedies. *Roman v. Estelle*, 917 F.2d 1505 (9th Cir. 1990).

This Petitioner identified the specific Constitutional rights allegedly infringed. Petitioner requested a Certificate or its equivalent stating that the Federal Claims were

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[1] (Art. II, 2, cl 2) of a case are relevant to the rendering of justice.

specifically addressed. Petitioner has never received the Certificate.

> Petitioner identified the specific Constitutional rights allegedly infringed. *Graham v. Connor*, 490 U.S. 386, 394 (1989).

If, in the Court's opinion, the merits of this case were in dispute and not supported by the record the Court had the discretion to require a mandatory hearing in order to assure a full and fair hearing.

a. Petitioner asserted specific federal claims violations.

(1). 18 U.S.C. 1001 (1994 & Supp. V 1999) – Falsification of records by the Agency for Health Care, Medicaid Fraud Control Unit, Children & Families, State Attorney, Administrative Judge Hixon, Board of Nursing Home Administrators.

(2). 18 U.S.C. 1621-1623 – Perjury, subornation of perjury, false declarations of "killings, rapes, abuse" by Defendants of Agency of Health Care.

(3). 42 U.S.C. 1983 – Prosecution without probable cause by the State Attorney.

(4). 42 U.S.C. 1985 – conspiracy by "state actors."

b. Petitioner asserted specific U.S. Amendment Violations.

(1). 1st – Defendant Caufman, Esq., threatened Petitioner with [another] arrest by State Attorney for seeking right of grievance to Board of Professional Regulations.

Agency for Health Care denied petitioner's filing of a complaint to the Board of Nursing against the Defendants. They notified Petitioner that they would "place the complaint in a file drawer."

(2). 4th – Unwarranted arrest – by State Attorney for alleged felony beyond the statue of limitation.

(3). 5th – Unfounded felony accusation – Agency for Health Care accused Plaintiff with accessory to "killings, rapes, abuse"; unprofessional conduct; abuse and neglect; negligence and incompetence.

Board of Nursing Home Administrators accused Petitioner with physical harm to residents.[2]

State Attorney accused Petitioner with the accessory after fact-adult abuse.

Children & Families Protective System accused Petitioner as Proposed confirmed "perpetrator of adult abuse; abuse and Neglect."[2]

In pretrial statement, Defendant Farr accused Petitioner of adult abuse.

(4). 14th – State Attorney denied Immunity against civil and criminal prosecution guaranteed by F.S. 415.1036. Petitioner had in good faith reported a suspected adult abuse to the proper authorities. F.S. 415.1034.[1]

Liberty interest – Petitioner has been unable to obtain employment in the field of her choice due to adverse publicity.

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[2] Public Policy deals with the relations between private individuals and the government – constitutional law, chemical law and administrative law taken together.

Stigmatized name (Reputation) – Petitioner was portrayed as incompetent and criminal in the news media, on T.V. and over the internet.

Malicious selective prosecution by the State Attorney. State Attorney suppressed exculpatory evidence. White owner also charged but not prosecuted.

Equal enforcement of law – Denied Petitioner by Police & State Attorney.

Due Process denied Petitioner by "state actors," and Lower Courts.

II. Petitioner submitted substantial evidence of the overt acts of each Defendant to deprive Petitioner of equal protection of the laws, to further the conspiracy, and to cause injury to Petitioner.

The conspiratorial nexus was initiated at some time during the survey of August 9, 1995 and the filing of the Verified Petition for Receivership (August 11, 1995). According to the *State of Florida Operations Manual*, May 11, 1992, p. 4 "Team Communication, Throughout . . . should discuss among themselves, on a daily basis, observations made . . . to facilitate decision making." There are usually 4-5 employees and a supervisor for each survey. Petitioner alleges that this purposeful calculated predetermined disregard of Plaintiff's Constitutional Rights was based on invidious racial discrimination by the Agency for Health Care employees. The media was present at the court hearing.

Facts of this case show that this conspiracy was a well-organized and overwhelming attempt to conceal the criminal acts of the Agency of Health Care employees and

the media. Private individuals willingly joined in the conspiracy.[3]

The overt acts of the Agency for Health Care employees were to (1) manufacture the felony charge of "killings, rapes, abuse"; (2) obtain a court order for a Verified Petition for Receivership based on the manufactured felony; (3) Agency "investigating the killings, rapes, abuse"; (4) Obstruct the filing of Petitioner's Complaint to the Board of Nursing; (5) submit a request to the Administrative Division – Board of Nursing Home Administrators based on fraudulent information; (6) threatening Petitioner with [another] arrest by the State Attorney for attempting redress of her grievances (7) falsification of records, and (8) perjury, subornation of perjury. The employees of the Agency for Health Care acted outside their scope of authority. The Agency for Health Care did not act through established state procedures under which they are authorized to act. There is no record of the police being notified of the "killings, rapes, abuse."

The overt act of the media was the invasion of Petitioner's privacy by the extreme negative coverage of the manufactured felonies. With deliberate indifference the Media never contacted Petitioner. Media never printed a retraction.

The overt acts of the Medicaid Fraud Control Unit was (1) to falsely accuse and "investigate" Petitioner for an alleged felony [accessory after fact-adult abuse] which

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[3] Doctrine of Respondeat Superior – holding an employer of principle liable for the employees or agents wrongful acts committed within the scope of the employment or agency.

their employees did not witness. With deliberate indifference the Medicaid Fraud investigators never communicated with Petitioner. (2) Falsification of records. (3) Pretrial statements that jeopardized fair & impartial trial. The Medicaid Fraud Control Unit did not file the complaint through established State procedures under which they are authorized to act. The Medicaid Fraud control unit employees acted outside the scope of their authority.

The overt act of the Tampa Police was the omission of the police to respond publicly to a public request for information regarding the "killings, rapes, abuse." With deliberate indifference, the police never contacted or communicated with Petitioner. This gives a chilling message that the police cannot be trusted to follow its own media relations policy. This gives a loud message that poor citizens and minority can not obtain equal treatment under the law.

> Agency is required to follow its own regulations. *Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489 (D.C. Cir. 1997)

The overt acts of the Children and Family Protective Unit were to falsely charge Petitioner with the (1) adult abuse and neglect; (2) confirmed perpetrator; and (3) inadequate supervision care giver present, and (4) falsification of records. They failed to complete their report within the allotted time period. They initiated the report 06/01/95. They completed the report 07/18/96. This was well beyond the 30-day statute of limitation to initiate, complete and dispose of cases.

The Children and Family Protective Unit did not file the charges through established state procedures under which they were authorized to act. The Children and Family Protective System did not notify the police or the

State Attorney regarding this alleged felony. Instead they notified the Administrative Division – Administrative Judge. The Children and Family Protective Unit acted outside the scope of their authority.

The overt acts of The Board of Children & Family Protective System was (1) to not abide by the Recommendation of the Administrative Judge. There was no legal justification for their action; (2) Falsification of records, and (3) No Final Order given to Petitioner.

The overt act of the Administrative Judge Hixson was to (1) fail to render a Recommendation based on the facts of case and law. His Recommendation was arbitrary and capricious.

The overt acts of the Board of Nursing Home Administrators were (1) Revocation of Petitioner's License without Due Process; (2) Not abide by the Recommendation of the Administrative Judge; (3) Falsification of records. There was no legal justification for this action. Petitioner had successfully passed every inspection during tenure as Director of Nursing and Administrator. Two inspections were given a superior rating.

The overt acts of State Attorney were (1) Falsely charged Petitioner with Accessory after the fact adult abuse; (2) Falsely charged Petitioner with filing a false report; (3) Falsely stated that there was a Police Report; (4) Suppression of evidence that would "negate guilt"; (5) Vindictive, malicious, selective prosecution for an alleged felony beyond the statue of limitation; (6) False arrest, and (7) False imprisonment.

The State Attorney contrived a conviction through the pretense of a trial, which in truth was but used as a means of depriving Petitioner of liberty through a deliberate

deception to the Court and jury by the presentation of testimony known to be perjured. With deliberate indifference, the State's Attorney's Office never contacted Petitioner before the trial. Petitioner was unaware that there was a warrant for her arrest until neighbors informed Petitioner that "police had blocked the street and surrounded my house" to arrest Petitioner. Per neighbors, "the police came with the cameras."

> The right of the individual citizen to be secure from an open and public accusation of crime, and from trouble, expense and anxiety of a public trial, before a probable cause is established by the presentation and indictment of a grand jury, in case of high offenses, is justly regarded as one of the securities to the innocent against hasty, malicious, and oppressive public prosecution and as one of the ancient immunities and privileges of English liberty. *Jones v. Robbins*, 74 Mass. 329, 344 (1857)

As evidenced by the Investigative Report, the State's Attorney knew he did not have probable cause to initiate criminal proceedings, and no factual evidence.

> Suppression of favorable evidence violates due process. *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963)
>
> False arrest *Posr v. Doherty*, 944 F.2d 91 (2 Cir. 1991)
>
> False imprisonment or illegal detention-*Eberle v. City of Anaheim*, 901 F.2d 814 (9th Cir. 1990)

The over act of private individuals was (1). Paid a fine of $19500 for alleged violations. Defendant Covell was the Administrator of Record. Doctrine of Respondeat Superior. Defendant Smith was the owner. Defendant Smith sent

Petitioner a letter stating, " . . . willing to tell the truth and testify against . . . all who were in error." (App. 34) Both were willing participants with "state actors" to make Petitioner the "scapegoat" in this cover-up scheme.

> [All Defendants] Violated clearly established statutory and constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The "state actors" violated the law and deprived Petitioner of her constitutional rights. There can be no qualified immunity of "state actors" who violate the law. The state of Florida has wavered its sovereign immunity (F.S. 768.28).

The Defendants violated Florida Statues e.g.,

Florida Statues 120(3); 400.19(3)(4); 415.1034(1); 415.1036; 415.104(2); 415.1065(3); 455.225(1)(2); 455.621(10); 766(d); 766.106; 766.1115.

Their conduct was unlawful.

Unlawful conduct – *Monroe v. Pape*, 365 U.S. 167 (1961)

For the multiple bogus charges against Petitioner see chart in the appendix 11.

III. Denial of an opportunity for discovery was an abuse of discretion.

> Federal Rules of Civil Procedure strongly favor full discovery whenever possible. *Farnsworth v. Proctor and Gamble Co.*, 758 F.2d 1545 (11th Cir. 1985)

Precedents are that the Courts must assume that the allegations of Petitioner's complaint are true.

> . . . accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Kyle K. v. Chapman*, 208 F.3d 940, 942 (11th Cir. 2000)

If the court had disputed Petitioner's factual allegation, then summary judgment or dismissal is inappropriate. The discovery which is the procedure to resolve factual disputes was denied by Court Order.

> Denial of an opportunity for discovery is an abuse of discretion when the discovery is necessary to fully develop the facts of a claim. *Teague v. Scott*, 60 F.3d 1167, 1172 (5th Cir. 1995). Recognizing this key principle, several courts have held that good cause is shown, and discover is warranted, where an evidentiary hearing is needed. *McDaniel v. United States District Court for Nevada*, 127 F.3d 886, 888 (9th Cir. 1997); *Jones v. Wood*, 114 F.3d 1002, 1008-10 (9th Cir. 1997); *Harris v. Nelson*, 394 U.S. 286, 295, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969).
>
> The Court has identified a strong federal policy favoring hearings because punishment obtained in violation of the Constitution is intolerable, and "the opportunity for redress, which presupposes the opportunity to be heard, to argue and present evidence, must never be totally foreclosed." *Townsend v. Sain Sheriff, et al.*, 372 U.S. 322 (1963).
>
> Per *Jackam v. Hospital Corp. of Am. Mideast, Ltd.*, 800 F.2d 1577, 1579 (11th Cir. 1986) – [Discovery] "is whether allegations are sufficient to allow her to conduct discovery in an attempt to prove allegation."

The dismissal of Petitioner's claim deprived the opportunity to be heard, to argue and present evidence.

The District Court's decision in canceling Discovery contradicts even its own precedents.

IV. The purpose of Rule 60(b) Motion is to notify Court of Fraud perpetuated upon the Court by officers of the Court.

The Supreme Court held that a defendant who makes a preliminary showing that affidavits were deliberately false is entitled to an evidentiary hearing.

Petitioner made a claim of fraud in the procurement of the Judgment to Dismiss and produced competent substantiated evidence to support claim. No other issues were raised.

> It is beyond question that a federal Court may investigate a question as to whether there was fraud in the procurement of a judgment. *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

The Lower Court's action to rely on the technical error of Petitioner in citing the wrong Judgment Date was disingenuous. The Lower Courts refused to consider competent substantial evidence presented to the Court in support of Rule 60(b) for fraud upon the courts.

Petitioner requested a rehearing (en banc). Petitioner notified the court of the technical error in citing the wrong Judgment Order. Petitioner's error was in citing date of March 12, 2002 versus relevant District Order of May 8, 2000. The rehearing was denied.

> [Refused to] allow technicalities which caused no prejudice to the prosecution to preclude a remand under 28 U.S.C. at 2106 (1988 ed.) "in the interest of justice". *Wood v. Georgia*, 450 U.S. 261, 265 n.5 (1981)
>
> Courts will go to particular pain to protect pro se Litigants against consequences of technical errors if injustice would otherwise result. *U.S. v. Sanchez*, 88 F.3d 1243 (D.C. Cir. 1996)
>
> Burden of proving error is harmless falls on government. *U.S. v. Charley*, 176 F.3d 1265 (10th Cir. 1999)
>
> Central purpose of any system of criminal justice is to convict the guilty and free the innocent. *United States v. Nobles*, 422 U.S. 225, 230 (1975)

By failing to act upon Petitioner's Rule 60(b) motion, the Lower Courts committed reversible error.

V. Petitioner's claim has Constitutional dimension and should be published.

Petitioner's claim is of Constitutional dimension. This is not a novel legal situation to warrant as unpublished opinion. Given the abundance of precedents in the Courts of Appeals, it was quite wrong to characterize Petitioner's claim as an invitation to enter uncharted territory. Regrettably, this is a routine case which presents important meritorious claims.

It is important to note that although the "state actor's" conduct at issue is shocking and outrageous, there is no need for the Court to break new ground to mint a novel constitutional tort.

> Any conduct that "shocks the conscience" or offends the community sense of fair play and decency. *Rochin v. California*, 342 U.S. 165 (1952) *Pittsley v. Warish*, 927 F.2d 3 (1st Cir. 1991)

Since Petitioner's claim is of a Constitutional dimension, the opinion should have been published. Pursuant to Circuit Rule 36-4, Petitioner requested the Court reissue the opinion for publication. Court did not honor this request. To not publish the opinion is inconsistent with the rudimentary demands of justice. Evidential link shows the action of "state actors" and the Lower Court impugn the integrity of the judicial system. "State actors" and the Lower Court rejected the rules and manipulated the judicial system.

CONCLUSION

Respondent has shown that she was incapable of seeking redress from the Lower Courts. Refusal of the Lower Courts to consider competent substantive evidence, to abide by precedents and procedure, shows an intent to obstruct litigation and is a violation of Petitioner's Constitutional Rights.

The issues of this case has been raised, preserved, and passed upon by the Lower Courts.

This case presents serious due process issues concerning fundamental Constitutional Rights. Petitioner

respectfully requests this court grant Certiorari to review the issues.

Respectfully submitted,

MARY ALICE DESSASAU
2609 Chipco Street
Tampa, Florida 33605
(813) 248-2320

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-11308
Non-Argument Calendar

MARY ALICE DESSASAU,
a.k.a. Mary Alice Green

Plaintiff-Appellant,

versus

DOUGLAS M. COOK, Director,
Agency for Health Care,
THOMAS W. CAUFMAN, Esq.,
Agency for Health Care, *ET AL.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Sep. 11, 2002)

Before BARKETT, WILSON and FAY, Circuit Judges.

PER CURIAM:

Mary Dessasau, proceeding *pro se*, appeals the denial of her motion for reconsideration, filed pursuant to Fed.R.Civ.P. 60(b), in underlying civil rights action, 42 U.S.C. §§ 1983, 1985, and 1988. Dessasau additionally

raises several arguments on appeal, which, for the reasons set forth below, are not addressed.

This court reviews the denial of a Rule 60(b) motion under an abuse of discretion standard. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001). On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for any reason justifying relief from the operation of the judgment. Fed.R.Civ.P. 60(b)(6); *Carter By and Through Carter v. United States*, 780 F.2d 925, 927 (11th Cir. 1986). Generally, an appeal of a Rule 60(b) motion is limited to the denial of that motion and does not bring up the underlying judgment for review. *American Bankers Ins. Co. of Florida v. Northwestern Nat. Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999). A Rule 60(b) appeal 'cannot be employed to breathe second life into an appeal that has already been taken and dismissed by the appellate court." *Villano v. City of Boynton Beach*, 254 F.3d 1302, 1313. Because the district court correctly found that it was without subject-matter jurisdiction to review our appellate decision in unpublished Appeal Nos. 99-14946 and 00-12552, the district court did not abuse its discretion by denying Dessasau's Rule 60(b) motion.

On March 15, 2001, we issued our opinion in appeals numbered 99-14946 and 00-12552 affirming the district court's dismissal of this action. In that opinion we set forth in detail our reasoning and the law controlling the issues presented. District courts are simply without jurisdiction to review such rulings by this court.

Because Dessasau attempted to relitigate issues already decided by this Court, and because the district

court was without subject-matter jurisdiction to review a decision by this Court, we affirm.

AFFIRMED.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 99-14946 & 00-12552
Non-Argument Calendar

D. C. Docket No. 99-CV-01170

MARY ALICE DESSASAU, a.k.a.
Mary Alice Green,

Plaintiff-Appellant,

versus

DOUGLAS M. COOK,
Director, Agency for Health Care,
THOMAS CAUFMAN, Esq., Agency
for Health Care, *et al.*,

Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

(Filed Mar. 15, 2001)

Before EDMONDSON, HULL and FAY, Circuit Judges.

PER CURIAM:

Mary Alice Dessasau ("Appellant"), proceeding *pro se*, appeals the district court's dismissal of her Amended Complaint alleging civil rights claims under 42 U.S.C. §§ 1983 and 1985, and state law claims of defamation. As a

threshold matter, we conclude that we have jurisdiction over this appeal. We review the grant of a motion to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim *de novo*, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Kyle K. v. Chapman*, 208 F.3d 940, 942 (11th Cir. 2000). Upon review of Appellant's Amended Complaint, the parties' briefs and the record on appeal, we find no reversible error.

In 1995, Appellant was a nursing home administrator employed by Ambrosia Nursing Home. In response to a complaint, the state's Agency for Health Care investigated Ambrosia and filed a petition to appoint a receiver because of allegations that some of Ambrosia's residents had killed or injured other residents and that Appellant had failed to intervene. As a result, Appellant lost her job and administrator's license. Appellant claims that she was wrongfully arrested and prosecuted on adult abuse charges and for filing a false report. Although Appellant was acquitted on the charges against her, she alleges that she has been labeled an abuser and is now unemployable in the medical field. On June 7, 1999, Appellant filed an Amended Complaint against 37 defendants alleging claims under 42 U.S.C. §§ 1983 and 1985, and state law defamation claims.

In October 1999, the district court dismissed Appellant's § 1983 claims against each of the defendants because they were private actors, municipal defendants acting in the absence of a custom or policy, or state actors entitled to immunity. In addition, the court dismissed Appellant's § 1983 claims because the claims were vague and conclusory, and because they failed to establish the requisite conspiratorial nexus. Finally, the court dismissed Appellant's defamation claims because they were filed

beyond the proper limitations period. We conclude that the district court's dismissal of Appellant's Amended Complaint for failure to state a claim upon which relief could be granted was proper.

A. Dismissal of § 1983 claims

1. Non-state Actors

To state a § 1983 claim, a plaintiff must allege that (1) the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the party of rights secured by the Constitution or federal laws. *Fullman v. Graddick*, 739 F.2d 553, 561 (11th Cir. 1984). A private person acts under color of state law when engaged in a conspiracy with state officials to deprive another of federal rights. *See Tower v. Glover*, 467 U.S. 914, 920, 104 S. Ct. 2820, 2824 (1984). If, however, the assertion of a conspiracy between a state actor and private party in a §1983 claim is unsupported by any operative facts, it is insufficient to show the required state-action nexus. *Phillips v. Mashburn*, 746 F.2d 782, 785 (11th Cir. 1984).

Appellant has not alleged that defendants Jim Major, Jim Hart, J. Stewart Bryan, Graham Woodlief, Orval Jackson, Lindsay Peterson, David Boylan, Denise White, Rupert Murdoch, Louis Boccardi, Vern Herzog, Bruce Covell, or Ella Mae Smith were state actors. She alleged in a conclusory manner that the media companies, for which some of the above-named individuals worked, aided and abetted the state's Agency for Health Care. She failed, however, to allege facts to support her accusation that the media companies conspired with state officials. As to Defendant Ella Mae Smith, Appellant alleged that she

"had knowledge of, aided, and abetted, and failed to prevent the furtherance of the conspiracy to target plaintiff." Nevertheless, Appellant alleged no facts to indicate that Ella Mae Smith actually conspired with state officials. Because Appellant made only conclusory allegations regarding the existence of a conspiracy with state actors, the court properly dismissed the § 1983 claims against Defendants Major, Hart, Bryan, Woodlief, Jackson, Peterson, Boylan, White, Murdoch, Boccardi, Herzog, Covell, and Smith.

2. Municipal Actors

With respect to the claims against Tampa's mayor, Dick Greco, Appellant's Amended Complaint does not allege wrongdoing on the part of the mayor. Accordingly, dismissal of the claims against him was appropriate. Appellant's Amended Complaint does allege that Tampa's Police Chief, Bennie Holder, was negligent and failed in his official duties, either through inadequate performance of his obligation to the public to provide information on matters of public concern or by failing in his investigative capacity to determine whether a killing had occurred through negligence, or otherwise. Nevertheless, even liberally construed, Appellant's claims against Chief Holder are asserted against him only in his official capacity. Because the claims are against Chief Holder in his official capacity, the suit is actually one against a municipality. *Farred v. Hicks*, 915 F.2d 1530, 1532 (11th Cir. 1990). As such, to state a viable § 1983 claim based on Chief Holder's actions, Appellant would have to allege that his actions were taken pursuant to a municipal policy or custom. *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 658, 690-91, 98 S. Ct. 2018 (1978) (to

state claim against muncicipal [sic] entity, plaintiff must allege that employee's unconstitutional action implemented or executed a policy statement, ordinance, regulation, or governmental custom). Because Appellant sued Chief Holder only in his official capacity and failed to allege an unconstitutional policy or custom on the part of the part of the municipality, the § 1983 claim against Chief Holder in his official capacity must fail.

3. State actors

Appellant made no specific allegations in the body of her Amended Complaint against state actor defendants Douglas Cook, Colleen David, Ann Mehaffey, Sandra Carey, Robert Butterworth, Harry Coe, Claudia Cockrell, Buddy Gissendonner, Patrick Niemann, Andrea Chilton, S. Nixdorf, Barbara Doyle, Linda Radigan, Edward Feaver, Charles Taylor, or Sharyn Smith. Accordingly, her § 1983 claims against those defendants in their personal capacity were properly dismissed.

To the extent that Appellant raised claims against Defendants Joanne Billingsley, Donna Hardy, Scott Farr, Ann Sarantos, Thomas Caufman, and Governor Jeb Bush in their personal capacities, those claims are barred by the doctrine of qualified immunity because the claims are general and conclusory and appellant has shown no affirmative causal connection between their acts and her alleged constitutional deprivation. *Williams v. Alabama State University*, 102 F.3d 1179, 1182 (11th Cir. 1997) (defendants are entitled to qualified immunity in a Rule 12(b)(6) context if the complaint failed to allege facts showing a violation of any clearly established constitutional right); *Zatler v. Wainwright*, 802 F.2d 397, 401

(11th Cir. 1986) (§ 1983 claims against individuals require proof of "an affirmative causal connection between the official's acts or omissions and the alleged constitutional deprivation").

Appellant's claims against Defendants Cook, David, Mehaffy, Carey, Butterworth, Coe, Cockrell, Gissendonner, Niemann, Hixson, Chilton, Nixdorf, Doyle, Radigan, Feaver, Taylor, Smith, Billingsley, Hardy, Farr, Sarantos, Caufman and Bush in their official capacities are barred by sovereign immunity. Sovereign immunity bars claims against government entities and official capacity defendants because Congress cannot authorize suits by private parties against unconsenting states. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72, 116 S. Ct. 1114, 1131-32 (1996). Florida has not waived its Eleventh Amendment immunity for itself or its subdivisions, including its officers in their official capacities. *Hamm v. Powell*, 874 F.2d 766, 770 n.3 (11th Cir. 1989), *reheard on other grounds*, 898 F.2d 293 (11th Cir.), *cert. denied*, 496 U.S. 938 (1990).

B. Dismissal of § 1985 claims

To proceed under § 1985, Appellant must have been the victim of a conspiracy, the purpose of which was to deprive her of the equal protection of the laws or of equal privileges and immunities under the laws. *Park v. City of Atlanta*, 120 F.3d 1157, 1161 (11th Cir. 1997). In civil rights conspiracy actions, conclusory, vague and general allegations of conspiracy are insufficient to support the claim. *Fullman*, 739 F.2d at 557. As discussed above, Appellant's allegations regarding the existence of a conspiracy and the defendants' roles in the alleged conspiracy

were vague, conclusory, and lacking in any factual support. The Amended Complaint alleged, at most, a series of unconnected events by separate, distinct, and largely unrelated actors. As such, the § 1985 claims were properly dismissed as to all defendants.

C. Dismissal of State Law Defamation Claims

Florida has a two-year limitations period for defamation actors. Fla. Stat. § 95.11(4)(g). Florida courts have held that a cause of action for defamation accrues on publication of the allegedly defamatory material. *Wagner, Nugent, Johnson, Roth, Romano, Erickson & Kupfer, P.A. v. Flanagan*, 629 So. 2d 113, 114-15 (Fla. 1993). With the exception of one, all of the news reports and articles about which Appellant complains were published more than two years prior to the initiation of her suit and are therefore barred by the statute of limitations. The only article published within the limitations period was published on August 9, 1998. According to the Appellant's Amended Complaint, the August 9th article reported that she was acquitted on charges that she was an accessory after the fact to adult abuse. Appellant does not allege that the August 9th article contained any false statement of fact, a requirement under Florida defamation law. *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983), *petition for review denied*, 443 So. 2d 979) Fla. 1984) (false statement of fact is essential for recovery in a defamation action). Thus, Appellant's defamation claim with respect to that article must fail

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARY ALICE DESSASAU,

Plaintiff,

Case No.
99-1170-CIV-T-24(A)

vs.

DOUGLAS M. COOK, et al.,

Defendants.

_____/

ORDER

This cause comes before the Court for consideration of the following motions:

(1) Defendants Jim Major and Jim Hart's Motion to Dismiss (Doc. No. 15, filed June 10, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to dismiss (Doc. No. 29, filed June 17, 1999) in response.[1]

(2) Defendants J. Stewart Bryan III, Graham Woodlief, Orval Jackson, and Lindsay Peterson's Motion to Dismiss (Doc. No. 19, filed June 11, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to Dismiss (Doc. No. 28, filed June 17, 1999) in response.

(3) Defendant Louis D. Boccardi's Motion to Dismiss (Doc. No. 20, filed June 11, 1999). Plaintiff filed a motion

[1] The Court will consider all of Plaintiff's motions to strike as responses to the Defendants' motion to dismiss because a motion to strike is inappropriate and would be denied.

to Strike Defendant's Motion to Dismiss (Doc. No. 32, filed June 17, 1999) in response.

(4) Defendants David Boylan and Denise White's Motion to Dismiss (Doc. No. 21, filed June 11, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to dismiss (Doc. No. 30, filed June 17, 1999) in response.

(5) Defendants Mayor Dick A. Greco and Chief of Police Bennie Holder's Motion to Dismiss (Doc. No. 22, filed June 11, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to Dismiss (Doc. No. 33, filed June 17, 1999) in response.

(6) Defendant Ella Mae Smith's Motion to Dismiss (Doc. No. 25, filed June 15, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to Dismiss (Doc. No. 31, filed June 17, 1999) in response.

(7) Defendants Douglas M. Cook, Colleen David, Ann Mehaffy, Sandra Cary, Robert A. Butterworth, Scott Farr, Harry Lee Coe, Claudia S. Cockrell, Buddy Gissendonner, Patrick J. Niemann, Andrea L. Chilton, Joanne Billingsley, and Richard Hixson's Motion to Dismiss (Doc. No. 35, filed June 28, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to Dismiss (Doc. No. 37, filed June 29, 1999) in response.

(8) Defendant the Honorable Governor Bush's Motion to Dismiss (Doc. No. 41, filed July 6, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to Dismiss (Doc. No. 45, filed July 8, 1999) in response.

(9) Defendants Thomas Caufman and Barbara Doyle's Motion to Dismiss (Doc. No. 54, filed July 16, 1999). Plaintiff did not file a response thereto.

(10) Defendant Rupert Murdoch's Motion to Dismiss (Doc. No. 56, filed July 22, 1999). Plaintiff did not file a response thereto.

(11) Defendants Vern Herzog and Bruce W. Covell's Motion to Dismiss (Doc. No. 58, filed July 23, 1999). Plaintiff filed a Motion to Strike Defendant's Motion to Dismiss (Doc. No. 27, filed June 17, 1999) in response.[2]

(12) Defendants Linda Radigan, Edward A. Feaver, Charles Taylor, Donna Hardy, Sharyn Smith and Ann Sarantos' Motion to Dismiss (Doc. No. 66, filed August 4, 1999). Plaintiff did not file a response thereto.[3]

In 1995, Plaintiff was the Administrator at the Ambrosia Home, a nursing home for the elderly in Tampa. In response to a complaint, the Agency for Health Care Administration ("AHCA") sent teams of inspectors to the Ambrosia Home in July and August 1995. As a result of these inspection [sic], the AHCA filed a Petition for Appointment of Receiver on August 11, 1995. The petition

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[2] Plaintiff filed her response (Doc. No. 27) to Defendants' Motion to Dismiss (Doc. No. 24). Plaintiff then amended her complaint. Defendants then filed a Motion to Dismiss Amended Complaint (Doc. No. 58). The Court will consider the Plaintiff's response (Doc. No. 27) as a response to the Defendants' Motion to Dismiss Amended Complaint (Doc. No. 58).

[3] The Court notes that some of the Defendants objected in their motions to dismiss to the Plaintiff filing her Amended Complaint without leave of court after they had filed their initial motions to dismiss. A motion to dismiss, however, is not a responsive pleading, and Plaintiff, therefore, could amend her complaint once as a matter of course at any time before a responsive pleading was served. Fed. R. Civ. P. 15(a); *Burns v. Lawther*, 53 F.3d 1237, 1241 (11th Cir. 1995); *Chilivis v. Securities & Exch. Comm'n*, 673 F.2d 1205, 1209 (11th Cir. 1982).

filed by the AHCA alleged that mentally ill residents of the Ambrosia Home had "killed, injured, fought and committed sexual battery upon other [elderly] residents. The Ambrosia Home failed to intervene." Plaintiff alleges that she was terminated on August 10, 1995, apparently as a result of the investigation, and that the AHCA instituted disciplinary action against her. Plaintiff claims that the Board of Nursing dismissed the claim against her on January 30, 1996. Later, she asserts that the Board of Nursing Home Administrators revoked her Nursing Home Administrator's License in February 1998.

According to Plaintiff's Amended Complaint, Plaintiff was arrested on March 21, 1997 and charged with being an accessory after the fact (to an adult abuse charge) and with filing a false report. This arrest was the result of an incident in May 1995, during which a mentally ill patient at the Ambrosia Home was assaulted by a nurse's aide. Plaintiff was not present at the time but filed a report about the incident stating that the patient had been injured when he tried to climb out of a window. Plaintiff was acquitted of the charges in August 1997.

Plaintiff brought this action against 38 defendants, all of whom have some connection to various administrative and criminal proceedings by Florida public agencies and officials concerning the alleged abuse at the Ambrosia Home. The Amended Complaint alleges claims for defamation and violations of 42 U.S.C. § 1983 and § 1985.

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). A complaint should not be dismissed for failure to state a cause of action "unless it appears beyond doubt that the

plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Bank v. Pitt,* 928 F.2d 1108, 1111-12 (11th Cir. 1991) (citing *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957)). The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." *Conley,* 355 U.S. at 47. All that is required is "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). The standard on a 12(b)(6) motion is not whether the plaintiff will ultimately prevail in his theories, but whether the allegations are sufficient to allow them to conduct discovery in an attempt to prove allegations. *Jackam v. Hospital Corp. of Am. Mideast, Ltd.,* 800 F.2d 1577, 1579 (11th Cir. 1986). The Federal Rules of Civil Procedure have adopted this "simplified pleading" approach because of "the liberal opportunity for discovery and other pretrial procedures . . . to disclose more precisely the basis of both claim and defense. . . . " *Conley*, 355 U.S. at 48. The purpose of notice pleading is to reach a decision on the merits and to avoid turning pleading into "a game of skill in which one misstep by counsel may be decisive to the outcome." *Id.*

Having considered the motions and responses, and being otherwise fully advised, the Court finds that, for the reasons set forth in the Defendants' motions and memoranda, Defendants' motions to dismiss should be granted. Accordingly, it is **ORDERED AND ADJUDGED** that Defendants' Motions to Dismiss (Doc. Nos. 15, 19, 20, 21, 22, 25, 35, 41, 54, 56, 58, 66), which the Court adopts and incorporates herein, are **GRANTED**. The preliminary pretrial conference scheduled for October 26, 1999 at 9:00 a.m. is canceled.

DONE AND ORDERED at Tampa, Florida, this 25th day of October, 1999.

/s/ Susan C. Bucklew
SUSAN C. BUCKLEW
United States
District Judge

Copies to:

All Parties and Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARY ALICE DESSASAU,

Plaintiff,

Case No.
99-1170-CIV-T-24(A)

vs.

DOUGLAS M. COOK, et al.,

Defendants.

_____/

ORDER

(Filed May 27, 1999)

This cause comes before the Court for consideration of Plaintiff's Motion for Appointment of Counsel (Doc. No. 2, filed May 19, 1999).

Appointment of counsel in a civil case is not a constitutional right, but rather a privilege that is justified only by exceptional circumstances. *Poole v. Lambert,* 819 F.2d 1025, 1028 (11th Cir. 1987). The following factors are among those to be considered in determining whether exceptional circumstances exist: (1) the merits of the plaintiff's claim, (2) whether the claim is factually or legally so complex as to warrant the assistance of counsel, (3) the plaintiff's efforts to obtain counsel, and (4) the plaintiff's financial ability to retain counsel. *Id.*; *Holt v. Ford,* 862 F.2d 850, 853 (11th Cir. 1989); *Caston v. Sears, Roebuck & Co.,* 556 F.2d 1305, 1309 (5th Cir. 1977).

In this case, neither the complaint nor the plaintiff's motion reveal any exceptional circumstances warranting the appointment of counsel. The Court notes that the

Plaintiff paid her filing fee and is not proceeding *in forma pauperis*.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Appointment of Counsel (Doc. No. 2) is **DENIED.**

DONE AND ORDERED at Tampa, Florida, this 27th day of May, 1999.

/s/ Susan C. Bucklew
SUSAN C. BUCKLEW
United States District Judge

Copies to:
All Parties and Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARY ALICE DESSASAU,

Plaintiff,

Case No.
99-1170-CIV-T-24(A)

vs.

DOUGLAS M. COOK, et al.,

Defendants.

_____/

ORDER

This cause comes before the Court for consideration of the following motions:

(1) Plaintiff's Affidavit and Request to Enter Default (Doc. No. 46, filed July 8, 1999) is **DENIED**.

(2) Defendants Caufman and Doyle's Motion to Substitute Motion to Quash with Motion to dismiss (Doc. No. 53, field July 16, 1999) is **GRANTED**.

(3) Defendant Ella Mae Smith's Motion To Strike Affidavit And Request to Enter Default (Doc. No. 60, filed July 27, 1999) is **DENIED AS MOOT**.

(4) Defendants Radigan, Feaver, Taylor, Hardy, S. Smith and Sarantos' Motion for Leave of Court to File Their Motion to Dismiss Out of Time (Doc. No. 65, filed August 4, 1999) is **DENIED AS MOOT**.

(5) Defendants Radigan, Feaver, Taylor, Hardy, S. Smith and Sarantos' Motion for Leave to

Amend Motion for Leave of Court to File Their Motion to Dismiss Out of Time (Doc. No. 67, filed August 5, 1999) is **GRANTED**.

(6) Defendants Radigan, Feaver, Taylor, Hardy, S. Smith and Sarantos' Motion for Leave of Court to File Their Motion to Dismiss Out of time (Doc. No. 68, filed August 5, 1999) is **GRANTED**.

DONE AND ORDERED at Tampa, Florida, this 14th day of October, 1999.

/s/ Susan C. Bucklew
SUSAN C. BUCKLEW
United States District Judge

Copies to:
All Parties and Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARY ALICE DESSASAU, A/K/A MARY ALICE GREEN,

Plaintiff,

CASE NO.: 99-1170-CIV-T-24A

v.

DOUGLAS M. COOK, DIRECTOR AGENCY FOR HEALTH CARE, ET AL,

Defendants.

_____/

ORDER

This cause came on for consideration upon Plaintiff's Motion to Reconsider Order Granting Stay of Discovery (doc. 91). Upon considerations, it is hereby

ORDERED that:

1. Plaintiff's Motion to Reconsider Order Granting Stay of Discovery (doc. 91) is DENIED.

DONE AND ORDERED in chambers at Tampa, Florida this 4th day of November 1999.

/s/ Mark A. Pizzo
Mark A. Pizzo
United States
Magistrate Judge

Copies to: Counsel of Record
Pro Se Plaintiff

PLAINTIFF'S
EXHIBIT
(i)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARY ALICE DESSASAU,

Plaintiff,

vs. Case No. 8:99-cv-1170-T-24A

DOUGLAS M. COOK, et al.,

Defendants.

_____/

ORDER

(Filed May 9, 2000)

This cause comes before the Court for consideration of Defendant S. Nixdorf's Motion to Dismiss Amended Complaint (Doc. No. 98).

In 1995, Plaintiff was the Administrator at the Ambrosia Home, a nursing home for the elderly in Tampa. In response to a complaint, the Agency for Health Care Administration ("AHCA") sent teams of inspectors to the Ambrosia Home in July and August 1995. As a result of these inspections, the AHCA filed a Petition for Appointment of Receiver on August 11, 1995. The Petition filed by the AHCA alleged that mentally ill residents of the Ambrosia Home had "killed, injured, fought and committed sexual battery upon other [elderly] residents. The Ambrosia Home failed to intervene." Plaintiff alleges that she was terminated on August 10, 1995 apparently as a result of the investigations, and that the AHCA instituted

disciplinary action against her. Plaintiff claims that the Board of Nursing dismissed the claim against her on January 30, 1996. Later, she asserts that the Board of Nursing Home Administrators revoked her Nursing Home Administrator's License in February 1998.

Plaintiff brought this action against 39 defendants, all of whom have some connection to various administrative and criminal proceedings by Florida public agencies and officials concerning the alleged abuse at the Ambrosia Home. The Amended Complaint alleges claims for defamation and violations of the First Amendment, § 1983 and § 1985.

Defendant S. Nixdorf moves this Court to dismiss the Amended Complaint on qualified immunity grounds. Defendant S. Nixdorf works for the Agency for Health Care. She is not mentioned in the body of the Amended Complaint and it is not clear whether she is being sued in her individual or official capacity.

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). A complaint should not be dismissed for failure to state a cause of action "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Bank v. Pitt*, 928 F.2d 1108, 1111-12 (11th Cir. 1991) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." *Conley*, 355 U.S. at 47. All that is required is "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). The standard on a 12(b)(6) motion is not whether the plaintiff will ultimately

prevail in her theories, but whether the allegations are sufficient to allow her to conduct discovery in an attempt to prove the allegations. *Jackam v. Hospital Corp. of Am. Mideast, Ltd.*, 800 F.2d 1577, 1579 (11th Cir. 1986). The Federal Rules of Civil Procedure have adopted this "simplified pleading" approach because of "the liberal opportunity for discovery and other pretrial procedures . . . to disclose more precisely the basis of both claim and defense. . . . " *Conley*, 355 U.S. at 48. The purpose of notice pleading is to reach a decision on the merits and to avoid turning pleading into "a game of skill in which one misstep by counsel may be decisive to the outcome." *Id.*

§ 1983 and § 1985

Plaintiff is barred from bringing suit against Defendant S. Nixdorf in her official capacity. "[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). "As such, it is no different from a suit against the State itself." *Id.*

" 'The Eleventh Amendment prohibits a federal court from exercising jurisdiction over a lawsuit against a state, except where the state has consented to be sued or waived its immunity, or where Congress has overridden the state's immunity.' " *Cross v. State of Alabama*, 49 F.3d 1490, 1502 (11th Cir. 1995) (quoting *Lassiter v. Alabama A & M Univ.*, 3 F.3d 1482, 1485 (11th Cir. 1993)). " 'Congress has not abrogated Eleventh Amendment immunity in section 1983 cases.' " *Id.* (quoting *Carr v. City of Florence, Ala.*, 916 F.2d 1521, 1525 (11th Cir. 1990)). The State of Florida had not waived its sovereign immunity concerning

§ 1983 cases. *Zatler v. Wainwright*, 802 F.2d 397, 400 (11th Cir. 1986).

As for the claims against Defendant S. Nixdorf in her official capacity, the Supreme Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Government officials performing discretionary functions are generally entitled to qualified immunity. *Lassiter v. Alabama A & M University*, 28 F.3d 1146, 1149 (11th Cir. 1994).

The Eleventh Circuit has set forth a two-step analysis for applying the *Harlow* objective reasonableness test for qualified immunity:

1. The defendant public official must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred.

2. Once the defendant public official satisfies his burden of moving forward with the evidence, the burden shifts to the plaintiff to show lack of good faith on the defendant's part. This burden is met by proof demonstrating that the defendant public official's actions violated clearly established constitutional law.

Rich v. Dollar, 841 F.2d 1558, 1563-64 (11th Cir. 1988).

There is no allegation that Defendant S. Nixdorf was not acting within the scope of her discretionary authority when the allegedly wrongful acts occurred. The Plaintiff,

therefore, has the burden of providing proof demonstrating that the Defendant's official actions violated clearly established constitutional law. "Clearly established" means the law must have been earlier developed in such a concrete and factually defined context to make obvious to all reasonable actors, in the Defendant's place, that what Defendant was doing violates federal law. *Lassiter*, 28 F.3d at 1149 (citing *Anderson v. Creighton*, 483 U.S. 635 (1987)). In other words, Defendant must have acted so obviously wrong, in light of pre-existing law, to be plainly incompetent, or to have knowingly violated the law, in order not to have immunity from suit. *Id.*

Plaintiff has failed to allege that Defendant's official actions violated clearly established constitutional law. In fact, nowhere in the body of her Amended Complaint does Plaintiff make any allegations against Defendant S. Nixdorf.

Section 1985 provides a remedy for a conspiracy to interfere with civil rights. In order to plead a § 1985 claim, Plaintiff must allege that "two or more persons in any State or Territory [have] conspire[d] . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). Conspiracy under this section requires an allegation of "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all." *Griffin v. Breckinridge*, 403 U.S. 88, 102 (1971). Plaintiff has not pled a conspiracy or any facts from which the Court could infer that the Defendant S. Nixdorf had any racial or other invidiously [sic] animus

toward her. Further, the Plaintiff has not identified any cognizable right that the Defendant conspired to infringe. Therefore, any § 1983 or § 1985 claims must be dismissed.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant S. Nixdorf's Motion to Dismiss Amended complaint (Doc. No. 98)) is **GRANTED**. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED at Tampa, Florida this 8 day of May, 2000.

/s/ Susan C. Bucklew
SUSAN C. BUCKLEW
United States District Judge

Copies to:

All Parties and Counsel of Record

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-14946-BB & 00-12552-BB

MARY ALICE DESSASAU,
a.k.a. Mary Alice Green

Plaintiff-Appellant,

versus

DOUGLAS M. COOK, Director,
Agency for Health Care,
THOMAS W. CAUFMAN, Esq.,
Agency for Health Care, *ET AL.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Jun. 7, 2001)

ORDER:

Appellant's "petition for rehearing – recall of mandate motion to file out of time" is DENIED.

/s/ Peter Fay
UNITED STATES CIRCUIT
JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-11308-GG

MARY ALICE DESSASAU,
a.k.a.
Mary Alice Green

Plaintiff-Appellant,

versus

DOUGLAS M. COOK, Director,
Agency for Health Care,
THOMAS W. CAUFMAN, Esq.,
Agency for Health Care
COLLEEN DAVID, Spokeswoman,
Agency for Health Care,
ANN SARANTOS, Area Supervisor,
BARBARA DOYLE, RNS,
ANN MEHAFFEY, RNS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Nov. 5, 2002)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir. 19___, ___ F.2d ___).

Before: BARKETT, WILSON and FAY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Peter Fay
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-11308-GG

MARY ALICE DESSASAU,
a.k.a.
Mary Alice Green

Plaintiff-Appellant,

versus

DOUGLAS M. COOK, Director,
Agency for Health Care,
THOMAS W. CAUFMAN, Esq.,
Agency for Health Care
COLLEEN DAVID, Spokeswoman,
Agency for Health Care,
ANN SARANTOS, Area Supervisor,
BARBARA DOYLE, RNS,
ANN MEHAFFEY, RNS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Nov. 5, 2002)

Before: BARKETT, WILSON and FAY, Circuit Judges.

PER CURIAM:

The petition(s) for Rehearing filed by Appellant, Mary Alice Dessasau is DENIED.

ENTERED FOR THE COURT:

/s/ Peter Fay
UNITED STATES CIRCUIT JUDGE

MULTIPLE BOGUS CHARGES AGAINS

	AHCA	ADM. JD. HIXC
Killings, Rapes	X	
Unprofessional conduct	X	
Abuse and Neglect	X	
Negligent and Incompetent	X	
Failed to meet Statutory Standards		X
Physical harm to residents		
Proposed Confirmed Perpetrator		
Inadequate supervision Care giver present		
Negligence		
Accessory after the fact- Adult Abuse		
Filing a false Report		

T PLANTIFF, MARY ALICE DESSASAU

	BD. OF NHA	PROTEC. SVC.	BD. OF C&F	STATE ATTN.
		X		
	X			
		X		
		X		
			X	
				X
				X

Ella Mae Smith
12700 N. Boulevard
Tampa, Florida 33612

Alice DEssasau [sic] Green
2609 Chipco St.
Tampa, Florida 33605

Dear Alice,

I want to tell the truth and testify against Family, Management, Agencies, Employees, Inspectors and all who were in error. My Lawyer said today that the only way I can do that is for you to drop me from the list you are suing. I have been trying but he will not let me tell the truth, he has to protect me. I am at odds with Tom and Beth. We don't see each other and we don't speak. We had a big falling out. I don't even see the grand children. I am my own person or trying to be. I need your help. You can trust me completely.

Private PHone [sic] #932-9034

I am your friend.

Sincerely,

/s/ Ella Mae Smith
Ella Mae Smith